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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 WASTE ACTION PROJECT,)
11 Plaintiff,) No. C13-01184 RSM
12 v.) CONSENT DECREE
13 BUCKLEY RECYCLE CENTER, INC.,)
14 RONALD SHEAR, RONDA STERLEY,)
15 and JEFFREY SPENCER,)
16 Defendants.)

17 **I. STIPULATIONS**

18 Plaintiff Waste Action Project sent sixty day notices of intent to sue to defendants Buckley
19 Recycle Center Inc. and Ronald Shear, alleging violations of the Clean Water Act, 33 U.S.C. §
20 1251 et seq., relating to discharges of pollutants and fill material at Buckley Recycle Center,
21 Inc.'s operations on the property of defendant Jeffrey Spencer in unincorporated King County
22 near Auburn, Washington, and seeking declaratory and injunctive relief, civil penalties, and
23 attorneys' fees and costs.

24 Waste Action Project sent sixty day notices of intent to sue to Buckley Recycle Center
25 Inc., Ronald Shear, Ronda Sterley, and Jeffrey Spencer, ("Defendants" collectively) alleging
26 violations of the Resource Conservation and Recovery Act's open dumping prohibition, 42 U.S.C.

§ 6945, relating to operations on the subject property, and seeking declaratory and injunctive relief, civil penalties, and attorneys' fees and costs.

The Defendants answered and denied the allegations of plaintiff Waste Action Project.

On December 7, 2016, the Court entered an order granting Waste Action Project's Third Motion to Enforce Settlement Agreement. On January 6, 2017, Buckley Recycle Center, Inc. ("BRC"), Ronald Shear, and Ronda Sterley (the "BRC Defendants") appealed the Court's December 7, 2016 order to the United States Court of Appeals for the Ninth Circuit.

BRC Defendants have closed on the acquisition of a new site for BRC's operations and have entered into a pre-application process with King County Department of Development and Environmental Services ("DDES") for the necessary permits to construct and operate a replacement facility on the new site. The precise date DDES will issue BRC the final Occupancy Permit for BRC's new site is currently unknown and therefore referred to herein as the "Occupancy Date."

Waste Action Project and Defendants agree that settlement of these matters is in the best interest of the parties and the public, and that entry of this Consent Decree is the most appropriate means of resolving this action, including BRC Defendants' appeal to the Ninth Circuit Court of Appeals, without any admission of liability of the Defendants.

Waste Action Project and Defendants stipulate to the entry of this Consent Decree without trial or adjudication of any issues of fact or law regarding Waste Action Project's claims or allegations set forth in its First Amended and Supplemental Complaint and its sixty-day notices.

Dated this 17th March, 2017
Buckley Recycle Center, Inc.

Dated this 10th of March, 2017
Waste Action Project

By /s/ Ronda Sterley
Ronda Sterley
Title:

By /s/ Greg Wingard
Greg Wingard
Title: Executive Director

1 Dated this 17th March, 2017

Dated this 3/13/17, 2017

2 /s/ Ronald Shear
3 Ronald Shear

/s/ Lee Spencer
Estate of Jeffrey Spencer

4
5 Dated this _____, 2017

6
7 _____
8 Ronda Sterley

9 **II. ORDER AND DECREE**

10 THIS MATTER came before the Court upon the foregoing Stipulations of the parties.

11 Having considered the Stipulations and the promises set forth below, the Court hereby ORDERS,
12 ADJUDGES, and DECREES as follows:

13 1. This court has jurisdiction over the parties and subject matter of this action.

14 2. Each signatory for the parties certifies for that party that she or he is authorized to
15 enter into the agreements set forth below.

16 3. This Consent Decree applies to and binds the parties and their successors and
17 assigns.

18 4. This Consent Decree applies to the operation, oversight, or both by Defendants of
19 the property located at 28225 West Valley Highway North, Auburn, Washington, 98002 (the
20 “BRC Site” or the “Spencer Property”). The parties acknowledge that defendant Jeffrey Spencer
21 passed away in January of 2015 and that the Spencer Estate is now the party owning the Spencer
22 Property.
23

24 5. This Consent Decree is a full and complete settlement of the claims alleged in the
25 First Amended and Supplemental Complaint and all other claims known and unknown existing as
26

1 of the date of entry of this Consent Decree, that could be asserted under the Clean Water Act, 33
2 U.S.C. §§ 1251-1387, or the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992,
3 arising from operations at the BRC Site. These claims are released and dismissed with prejudice.
4 Enforcement of this decree is Waste Action Project's exclusive remedy for any violation of its
5 terms. With this Consent Decree, each party releases the other parties and the Estate of Jeffrey
6 Spencer, from all claims of any sort arising from this lawsuit, with the exception of enforcement
7 of this decree as provided for herein.
8

9 6. Defendants enter into this Consent Decree for the purposes of settlement of
10 disputed claims, to avoid the expenses and uncertainty of litigation. Defendants admit no liability
11 to any of the claims or allegations of Plaintiff.
12

13 7. Defendants agree to the following terms and conditions in full and complete
14 satisfaction of the claims covered by this decree:

15 a. BRC Defendants have removed all materials, including the berm, and all
16 equipment, from the westernmost twenty-five feet along the west property line of the
17 Spencer Property (hereinafter, the "West Buffer Area");

18 b. BRC Defendants will vacate operations in and removed all materials and
19 equipment from the northwest quarter (approximately 2.5 acres) of the Spencer Property
20 (hereinafter the "Northwest Quarter") by September 30, 2017.
21

22 c. BRC Defendants will employ their best efforts to submit a complete and
23 adequate application as soon as possible to DDES for the necessary permits to construct
24 and operate a replacement facility on a new site, and will otherwise employ their best
25 efforts to obtain the final Occupancy Permit for BRC's new site. The date on which King
26 County issues a final Occupancy Permit for BRC's new site and on which that site is

1 legally available for full use for BRC's business shall be referred to herein as the
2 "Occupancy Date".

3 d. BRC Defendants will vacate operations in and remove all materials and
4 equipment from the remainder of the Spencer Property (approximately 7.5 acres) as
5 follows: one acre every six months following the Occupancy Date.
6

7 e. By the time BRC Defendants are required to vacate the last acre of the
8 Spencer Property they will vacate the entire Spencer Property and remove all materials
9 and equipment from the Spencer Property, including all berm materials, and all wheel
10 wash materials and equipment, including wheel wash piping and pavement, provided that
11 in the eastern third of the Spencer Property, the BRC defendants shall leave the property
12 in a condition suitable for residential use, which shall include existing driveways and
13 graveled areas, but excluding the wheel wash, as suitable and acceptable to the Spencer
14 Estate.
15

16 f. For any area which the BRC Defendants vacate in the western two thirds of
17 the Spencer Property, BRC Defendants will, upon vacating that area, till and plant a mix
18 of native plant species ("Habitat Seed Mix" defined as eight parts blue wildrye (*Elumus*
19 *glacus*), four parts slough sedge (*Carex obnupta*), and two parts each soft rush (*Juncus*
20 *effusus*), slender rush (*Juncus tenuis*), tufted hairgrass (*Deschampsia caespitosa*), and
21 western mannagrass (*Glyceria occidentalis*)) at a density of twenty pounds of seed per
22 acre evenly distributed throughout the area, with the goal of returning the western two
23 thirds of the property to a tillable condition, provided that BRC Defendants need not plant
24 Habitat Seed Mix in areas where the owner of the Spencer Property has begun row
25 cropping.
26

1 g. BRC Defendants will aerate any significant water storage that results on
2 vacated property as a result of the berm locations.

3 h. The BRC Defendants will notify Waste Action Project and the Estate of
4 Jeffrey Spencer (Attn: Lee Spencer) in writing of their completion of each of the tasks
5 listed in subparagraphs (a) through (f) of this paragraph seven.
6

7 i. Within seven (7) days of a written request to enter the Spencer Property,
8 Defendants will permit Waste Action Project to enter the Spencer Property and allow
9 reasonable access for Waste Action Project to verify completion of any of the tasks listed
10 in subparagraphs (a) through (g) of this paragraph seven.

11 j. The BRC Defendants will forward copies of all written communications
12 between the BRC Defendants and the Washington Department of Ecology and/or King
13 County Department of Permitting and Environmental Review related to the Spencer
14 Property to Waste Action Project and (if desired) to the Estate of Jeffrey Spencer (Attn:
15 Lee Spencer) within seven days of the communication. This obligation will continue
16 through the termination date of this Consent Decree.
17

18 8. In fulfillment of a term of the parties' settlement and in exchange for
19 consideration, on or about October 15, 2015, the BRC Defendants did collectively pay \$500.00 to
20 the Green River Community College Foundation for environmental benefit projects in the Green
21 River watershed described in Attachment A to this Consent Decree. Payment was made by check
22 payable Green River Community College Foundation and delivered to George Frasier, 12401 SE
23 320th St., Auburn WA 98092-3622.
24

25 9. The BRC Defendants will pay Waste Action Project's reasonable litigation fees
26 and costs in the amount of \$193,783.53. This payment is full and complete satisfaction of any

1 claims Waste Action Project may have under the Clean Water Act or the Resource Conservation
2 and Recovery Act for fees and costs. Payments as set forth herein will be made by certified bank
3 check(s) payable and mailed via certified mail to Smith & Lowney, PLLC, 2317 East John St.,
4 Seattle, WA 98112, attn: Richard A. Smith. The BRC Defendants will make payments as
5 follows:
6

7 a. \$133,783.53 within ten (10) days of the date of Court approval and execution of
8 this Consent Decree;

9 b. \$10,000 per month beginning forty (40) days from the date of Court approval and
10 execution of this Consent Decree and continuing until payment has been made in full.

11 10. The Court will retain jurisdiction over this matter and allow this case to be
12 reopened without filing fee for the purpose of enabling the parties to apply to the Court for any
13 further order that may be necessary to construe, carry out, enforce compliance and/or resolve any
14 substantive dispute regarding the terms or conditions of this Consent Decree until termination of
15 the Consent Decree per paragraph 13.
16

17 11. For any future claims that Waste Action Project may assert against BRC related to
18 any property other than the BRC Site, WAP will agree to submit the dispute to mediation before
19 instituting any legal action against BRC.
20

21 12. The parties recognize that, pursuant to 33 U.S.C. § 1365(c)(3), no consent
22 judgment can be entered in a Clean Water Act suit in which the United States is not a party prior
23 to 45 days following the receipt of a copy of the proposed consent judgment by the U.S. Attorney
24 General and the Administrator of the U.S. EPA. Therefore, upon the signing of this Consent
25 Decree by the parties, Waste Action Project will serve copies of it upon the Administrator of the
26 U.S. EPA and the Attorney General.

1 13. This Consent Decree takes effect upon entry by the Court. It terminates upon
2 completion of the tasks identified in paragraphs seven and nine of this Consent Decree.

3 14. All parties have participated in drafting this decree.

4 15. This Consent Decree may be modified only upon the approval of the Court.

5 16. If for any reason the court should decline to approve this Consent Decree in the
6 form presented, this Consent Decree is voidable at the discretion of any party. The parties agree
7 to continue negotiations in good faith in an attempt to cure any objection raised by the Court to
8 entry of this Consent Decree.
9

10 17. Notifications required by this Consent Decree must be in writing. The sending
11 party may use any of the following methods of delivery: (1) personal delivery; (2) registered or
12 certified mail, in each case return receipt requested and postage prepaid; (3) a nationally
13 recognized overnight courier, with all fees prepaid; or (4) e-mail. For a notice or other
14 communication regarding this decree to be valid, it must be delivered to the receiving party at the
15 addresses listed below or to any other address designated by the receiving party in a notice in
16 accordance with this paragraph seventeen.
17

18 **if to Waste Action Project:**

19 Waste Action Project
20 P.O. Box 4832
21 Seattle, WA 98194
22 email: gwingard@earthlink.net

23 **and to:**

24 Smith & Lowney PLLC
25 2317 East John St.
26 Seattle, WA 98112
 email: claret@igc.org

if to Defendant(s):

Buckley Recycling Center
P.O.Box 1373
Enumclaw, WA 98022

and to:

Justin D. Park
Romero Park P.S.
155 108th Ave. NE, Suite #202
Bellevue, WA 98004
email: jpark@romeropark.com and spendergast@romeropark.com

and to:

Lee Spencer
Personal Representative of the Estate of Jeff Spencer
6710 S 267th
Auburn WA 98001

and to:

Robert E. West, Jr.
West Law Offices, PS
332 1st St NE
Auburn, WA 98002

A notice or other communication regarding this Consent Decree will be effective when received unless the notice or other communication is received after 5:00 p.m. on a business day, or on a day that is not a business day, in which case the notice will be deemed received at 9:00 a.m. on the next business day. A notice or other communication will be deemed to have been received: (a) if it is delivered in person or sent by registered or certified mail or by nationally recognized overnight courier, upon receipt as indicated by the date on the signed receipt; or (b) if the receiving party rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, then upon that rejection, refusal, or inability to deliver; or (c) for notice provided via e-mail, upon receipt of a confirming response or a "read

1 receipt" from the party receiving notice.

2 SO ORDERED this 11th day of May 2017.

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5 RICARDO S. MARTINEZ
6 CHIEF UNITED STATES DISTRICT JUDGE
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